

REMARKS

Reconsideration of the rejections set forth in the Final Office Action mailed May 16, 2006, is respectfully requested. Claims 1-11, 14-15, and 19-23 have been cancelled. Claim 12 has been amended. Support for this amendment can be found in the specification at, e.g., page 13, lines 16-19, Figs. 13A-B, and Fig. 14A. Therefore, no new matter has been added with this amendment. Claims 12-13 and 16-18 remain pending in this application.

Amendments to the Specification

Applicants have amended the relate-back statement in the specification to specify that the current application is a continuation-in-part of International Patent Application Serial No. PCT/US00/14708, filed May 30, 2000, which is a continuation-in-part of and claims the benefit under 35 USC §119 of U.S. Patent Application Serial No. 09/322,516, filed May 28, 1999, now U.S. Patent No. 6,245,107, and that the current application also claims priority to U.S. Provisional Patent Application Serial No. 60/148,913, filed August 13, 1999. A request for corrected filing receipt has also been submitted herewith.

Drawings

Claim 1 has been amended to require the step of “*expanding the appendages of the flexible device by allowing the device to return to a memorized shape substantially larger than the defect in the outer layer of the annulus fibrosis.*” This step is clearly illustrated in Figs. 13A-B and Fig. 14A. Therefore, no corrected drawing sheets have been submitted.

35 U.S.C. § 112

Claims 12-23 were rejected under 35 U.S.C. § 112, first paragraph, as allegedly failing to comply with the written description requirement. In particular, the Examiner has alleged that the original specification does not support the newly added limitation “allowing the device to expand to a size or return to memorized shape substantially larger than the cross sectional area of the defect.” Applicants have amended claim 12 to require the step of “*expanding the appendages of the flexible device by allowing the device to return to a memorized shape substantially larger than the defect in the outer layer of the annulus fibrosis.*” Support for this amendment can be found in the specification at, e.g., page 13, lines 16-19, Figs. 13A-B, and Fig. 14A. Therefore, Applicants respectfully request withdrawal of the rejection and reconsideration of the claims as amended.

Art Rejections

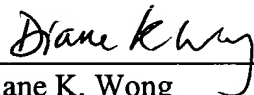
Claims 12-23 were rejected under 35 U.S.C. § 103(a) as being allegedly unpatentable over Bao et al. (USP 6,224,630). Applicants respectfully assert that Bao et al. does not teach or suggest the step of “*inserting a flexible device into the defect in the annulus fibrosis, the flexible device having a structure with at least two appendages made from a shape-memory material.*” Bao et al. describes a device made of a porous material that permits the natural ingrowth of tissue into the device. (See Col. 2, line 61- Col. 3, line 7) Bao explains that the material is expandable (i.e., swellable) and can be provided in a variety of configurations, such as a generally cylindrical plug or in a tubular or sheet-like form. (See Col. 3, lines 8-15; see also Col. 7, lines 56-60 “Alternatively, the device can have a cubic, elongated (e.g., strand-like), hollow tubular, or

sheet-like form depending upon the desired tissue site.”) There is no teaching or suggestion that the device has “*at least two appendages*” or that the appendages are made from a “*shape-memory material*.” Therefore, Applicants respectfully request withdrawal of the rejection and reconsideration of the claims as amended.

For all the foregoing reasons, Applicant asserts the claims are in condition for allowance. Favorable action on the merits of the claims is therefore earnestly solicited. If any issues remain, please contact Applicant’s undersigned representative at (949) 760-9600. The Commissioner is hereby authorized to charge any additional fees that may be required to Deposit Account No. 50-2862.

Respectfully submitted,
O’MELVENY & MYERS LLP

Dated: August 16, 2006

By: 
Diane K. Wong
Reg. No. 54,550

JCK/DKW/cp

O’Melveny & Myers LLP
610 Newport Center Drive, 17th Floor
Newport Beach, CA 92660-6429
(949) 760-9600